

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

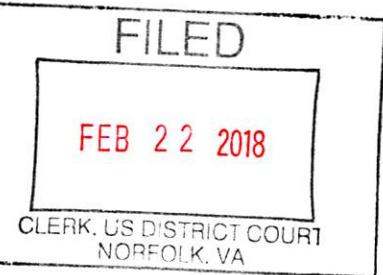
ORLANDO IRVIN JOHNS,

Petitioner,
v.

Civil Action No. 2:16cv223

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.



FINAL ORDER

This matter is before the Court on Orland Irvin Johns' ("Petitioner") Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 6) and Respondent's Motion to Dismiss (ECF No. 14). Petitioner, who was incarcerated at the time of the filing of the Petition on August 26, 2016, raised a single ground for habeas relief: that the sentence he was serving exceeded that required by his Judgment. *See* ECF No. 6 at 6. On April 19, 2017, the Attorney General of Virginia filed a Motion to Dismiss on behalf of the Respondent. *See* ECF Nos. 13–16.

The matter was referred to United States Magistrate Judge Lawrence R. Leonard pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and Local Rule 72 for a report and recommendation. Because Petitioner was released from imprisonment on August 28, 2016, and no term of supervised release or other post-sentence restraint was provided for, the Magistrate Judge found that Petitioner did not satisfy the "in custody" requirement for the filing of a habeas petition. *See* 28 U.S.C. § 2241(c)(1). The Magistrate Judge also found that Petitioner had failed to properly exhaust his state remedies. Accordingly, the

Magistrate Judge recommended that the Petition be denied and dismissed with prejudice. ECF No. 17 at 3–6.

By copy of the report, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. *Id.* at 6. The Court has received no objections to the Magistrate Judge’s Report and Recommendation and the time for filing objections has now expired.

Accordingly, the Court accepts the findings and recommendations set forth in the report of the United States Magistrate Judge filed on January 26, 2018. ECF No. 17. It is therefore ORDERED that Respondent’s Motion to Dismiss (ECF No. 14) be GRANTED and that the Petition (ECF No. 6) be DENIED and DISMISSED WITH PREJUDICE.

Petitioner may appeal from the Judgment entered pursuant to this Final Order by filing a notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of such Judgment.

The Clerk is REQUESTED to mail a copy of this Order to Petitioner and provide an electronic copy of the final order to counsel of record for Respondent.

IT IS SO ORDERED.

Feb. 22, 2018
Norfolk, Virginia


Arenda L. Wright Allen
United States District Judge